

DOCKET NO.: EWAL-0002

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Stephen Ewald**

Confirmation No.: **6111**

Serial No.: **10/672,133**

Group Art Unit: 3625

Filing Date: **September 26, 2003**

Examiner: **Mark A. Fadok**

For: **System And Method For Purchasing Linked With Broadcast Media**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPELLANT'S REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

Appellants submit this Reply in response to the Examiner's Answer dated March 7, 2007 in connection with the above-identified application. This reply is being filed within four months of said answer.

July 2, 2007

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Listing of Claims:

1. (Currently Amended) A system for purchasing goods and services linked with broadcast media, comprising:

one or more broadcast receivers that receive a broadcast media including information relating to goods and services that can be purchased by persons receiving the media, each receiver further selectively receiving a purchase request and recording the purchase data for goods and services that a person purchases relating to the broadcast media; and

one or more servers that selectively receive and verify purchase data sent from the one or more receivers,

wherein the purchase data containing sufficient information that upon verification at the one or more servers, the purchase accomplishable without further interaction from the person.

2. (Previously Presented) The system of claim 1, wherein each broadcast receiver is in communication with a server.

3. (Previously Presented) The system of claim 1, wherein each broadcast receiver stores the purchase data and transmit the stored purchase data at a predetermined location.

4. (Previously Presented) The system of claim 1, wherein each broadcast receiver includes a radio.

5. (Previously Presented) The system of claim 1, wherein the broadcast media includes information about the purchase of the goods and services.

6. (Previously Presented) The system of claim 1, wherein the broadcast media does not include information about the purchase of the goods and services.

7. (Previously Presented) The system of claim 1, wherein each broadcast receiver is a single device.

8. (Previously Presented) The system of claim 1, wherein each broadcast receiver is comprised of at least two devices, to include a broadcast media receiver and a purchase selection device.

9. (Currently Amended) A broadcast receiver for purchasing goods and services linked with broadcast media, the broadcast receiver receiving a broadcast

media including information relating to goods and services that can be purchased by persons receiving the media, the broadcast receiver further selectively receiving a purchase request and recording the purchase data for goods and services that a person purchases linked with the broadcast media and selectively transmitting the purchase data to another computer device, wherein the purchase data containing sufficient information that upon verification, the purchase accomplishable without further interaction from the person.

10. (Previously Presented) The broadcast receiver of claim 9, further comprising a purchase selection indicator.

11. (Previously Presented) The broadcast receiver of claim 9, wherein the broadcast receiver further stores the purchase data and transmits the stored data at a predetermined location.

12. (Currently Amended) A method for purchasing goods and services linked with broadcast media, comprising the steps of:

receiving at a broadcast receiver a broadcast media including information relating to goods and services that can be purchased by persons receiving the media;

receiving at the broadcast receiver a purchase request;

selectively recording purchase data at the broadcast receiver for a good and service that a person purchases relating to the broadcast media;

sending the purchase data from the broadcast receiver to at least one server; receiving the purchase data at the at least one server; and verifying the purchase data from the broadcast receiver at the least one server.

wherein the purchase data containing sufficient information that upon verification at the at least one server, the purchase accomplishable without further interaction from the person.

13. (Previously Presented) The method of claim 12, wherein:
the step of sending the purchase data is sending the purchase data to a plurality of servers; and
further comprising the step of storing the purchase data of one of the servers;
and

wherein the step of verifying the purchase data occurs at a different server.

14. (Previously Presented) The method of claim 12, wherein the step of sending the purchase data is sending the purchase data from the broadcast receiver to the server via a secure communication channel.

15. (Previously Presented) The method of claim 12, further comprising the steps of:

storing the purchase data at the broadcast receiver; and

transmitting the stored data from the broadcast receiver to the server when the broadcast receiver is at a predetermined location.

16. (Previously Presented) The method of claim 12, further comprising the steps of:

storing the purchase data at the broadcast receiver; and

transmitting the stored data from the broadcast receiver to the server at a predetermined period of time.

17. (Previously Presented) The method of claim 12, wherein the step of receiving at a broadcast receiver a broadcast media receiver is receiving a radio signal at a radio receiver.

18. (Previously Presented) The method of claim 12, wherein the step of receiving at a broadcast receiver a broadcast media is receiving a broadcast media that includes information about the purchase of goods and services contained within the broadcast media.

19. (Previously Presented) The method of claim 12, wherein the step of receiving at a broadcast receiver a broadcast media is receiving a broadcast media that does not include information about the purchase of goods and services contained within the broadcast media.

20. (New) The system of claim 8, wherein at least two devices are separate.

REMARKS

Claims 1-20 are pending in the present application. Claims 1, 9 and 12 have been amended herein and claim 20 has been added. Entry of this Amendment and Remarks and further examination of this application are respectfully requested.

One aspect of the technology described in this application is that the person making the purchase need only indicate a desire to purchase a good and service, such as by simply pressing a button (virtual, physical, or other interaction) on a radio receiver, and the purchase may be accomplished with no further interaction from the person. Specification, [0008], [0009], [0011], [0020]. For this to happen, the purchase data needs to contain sufficient information so that upon verification, the purchase may be accomplished with no further interaction from the person. It is the nature of the purchase data and the manner in which it is processed in conjunction with the one or more servers that receive the purchase data and verify the purchase that allows the purchase to be completed in this manner if desired.

It should be kept in mind that the claimed system, receiver, and method, while allowing for the purchase to be accomplished without further interaction with the person, are inclusive of steps that can be part of a verification process that require further interaction with the person such as confirming that the person wants to purchase the chosen good and service, requesting a receipt for the purchase, and the like (see, e.g. [0031]: "...other determinations can be made before the purchase data is accepted."). In other words, the claimed system, receiver and method possess the function that the purchase can be accomplished without any further interaction from the person, which function can be used or not be used as desired.

In addition claim 20 has been added which specifies that the at least two devices called for in claim 8 are separate. Support for this claim is found at paragraph [0024] of the specification.

The Applicant respectfully submits that the entry of these amendments will place the claims in condition for allowance.

Rejections under 35 U.S.C. §102(e)

The Office Action rejected Claims 1-13 and 15-19 under 35 U.S.C. §102(e) as being unpatentable over *Kesling* (US Pat. Pub. No. 2002/132,575). Applicant traverses these rejections and hereby requests reconsideration thereof. All arguments set forth in the Appeal Brief received December 4, 2006, are incorporated by reference herein and should be reviewed by the examiner in light of the claims as now presented.

As argued in the Appeal Brief received December 4, 2006, anticipation is an exacting standard. *Id.*, pages 5-6. Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim. *In re Bond*, 910 F.2d 831, 832, 15 USPQ2D 1566, 1567 (Fed. Cir. 1990). Implicit in a review of an examiner's anticipation analysis is that the claim must first have been correctly construed to define the scope and meaning of each contested limitation. See, e.g., *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2D 1671, 1674 (Fed. Cir. 1994) ("To properly compare [an allegedly anticipatory prior art reference] with the claims at issue, we must construe the term 'computer' to ascertain its scope and meaning.").

It was argued in the previously submitted Appeal Brief that the "purchase data" required by the pending claims is of a nature that upon verification, the purchase can be accomplished without further interaction from the person. See,

e.g., Appeal Brief, pages 6-7. The examiner stated in the Examiner's Answer that such a feature is not recited in the claims. *Id.*, page 5. While the examiner's claim construction in this regard is not agreed with, applicant has amended the claims to recite this feature in accord with the support of the Specification.

As developed previously, while *Kesling* describes the "purchase" of goods and services linked with broadcast media, *Kesling* is bereft of any detail in regard to how such a purchase is performed. *Kesling* does not describe a system, receiver and method where the purchase data contain sufficient information that upon verification the purchase may be completed without further interaction from the person.

It is asserted that the claims are not anticipated by *Kesling*. As the record now stands, it remains unclear how the examiner relies upon *Patsioskas* (US Pat No. 7,101,263) in the anticipation rejection based upon *Kesling*. As explained in the Appeal Brief, *Kesling* describes two broad embodiments of that invention, flash memory and wireless. It is only the wireless embodiment of *Kesling* that is relevant to the claimed subject matter under review in this application. *Patsioskas* on the other hand is limited to flash memory technology. If after considering the amended claims anew, the examiner remains of the opinion that *Kesling* anticipates any of the pending claims, the examiner is respectfully asked again to clarify the rejection as to how *Patsioskas* is relied upon and the legal authority for such reliance.

In response to the separate argument for claim 8 set forth in the previously filed Appeal Brief, the examiner stated that claim 8 did not explicitly state that the at least two devices are separate. Examiner's Answer, page 14. Claim 20 has been added that further limits claim 8 and states that the at least two devices are separate. Thus, claim 8 is open to the at least two devices being separate or not, while claim 20 requires that the at least two devices are separate.

Rejection under 35 U.S.C. §103(a)

The Office Action rejected Claim 14 under 35 U.S.C §103(a) as being unpatentable over *Kesling*, in view of an Official Notice regarding secure communication channels. It was stated that while *Kesling*, does not teach a secure communication channel, it is notoriously well known to employ secure communication channels when endeavoring to conduct transactions of the type disclosed by *Kesling*. Applicant respectfully traverses this rejection in so far as it pertains to the claim as amended.

As discussed above, *Kesling* does not describe a method where the purchase data contain sufficient information that upon verification, the purchase may be accomplished without further interaction from said person. Obviousness must be based upon the subject matter of a claim as a whole. 35 U.S.C. § 103(a). Thus, the obviousness rejection is improper.

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant respectfully submits that the application is in condition for allowance and notification to that effect is earnestly solicited. The Examiner is courteously invited to contact the Applicant's attorneys at (404) 459-0050, should it be necessary to facilitate the allowance of this application.

No additional fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees which may be required, including any necessary extensions of time, which are hereby requested, to Deposit Account No.23-3050.

Date: July 2, 2007

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